

FILED

APR 28 2025

Heidi D. Campbell, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

| | | |
|---------------------------|---|--------------------|
| UNITED STATES OF AMERICA, |) | |
| Plaintiff, |) | Case No. 21-CR-361 |
| v., |) | |
| CAMERON KELLY McABEE, |) | |
| Defendant. |) | |

MEMORANDUM OF FACTS AND LAW IN SUPPORT OF
McABEE'S MOTION UNDER 28 U.S.C. §2255
TO VACATE, SET ASIDE, OR CORRECT SENTENCE

Comes now Cameron Kelly McAbee, pro se, hereby respectfully submitting his Memorandum of Facts and Law In Support of his Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct his Sentence.

INTRODUCTION

McAbee was charged in a four-count indictment on August 17, 2021. [DE 15] After conferring with counsel, McAbee entered a plea of guilty on May 5, 2022 to each of the four counts: violations of 18 U.S.C. §2251(b) and (e); 18 U.S.C. §2252(a)(2) and (b)(1); and 18 U.S.C. §2252(a)(4) and (b)(2). [DE 33] McAbee entered his plea pursuant to an agreement with the government. [DE 37] At that time, McAbee understood his Plea Agreement would yield a sentence of about twenty-years or less.

☒ Mail ☐ No Cert Svc ☐ No Orig Sign
☐ C/J ☐ C/MJ ☐ C/Ret'd ☐ No Env
☐ No Cpy's ☒ No Env/Cpy's ☐ O/J ☐ O/MJ

McAbee came to this understanding based upon his communication with counsel and the resulting advice.

On August 25, 2023, This Court sentenced McAbee to an aggregate sentence of life imprisonment. This surprised McAbee entirely. McAbee then filed a Notice of Appeal. [DE 57] McAbee's direct appeal was subsequently dismissed due to the government asserting the appellate waiver provision contained in McAbee's Plea Agreement. This Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct the sentence now follows.

ARGUMENT

The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to counsel during all important stages of the proceedings. Plea negotiations are such an important stage where a defendant is "entitled to the assistance of competent counsel." McMann v. Richardson, 397 U.S. 759, 771 (1970); see also Hill v. Lockhart, 474 U.S. 52, 57 (1985); Lafler v. Cooper, 566 U.S. 156, 165 (2012).

The crux of the argument here is that McAbee received ineffective assistance of counsel during the plea negotiations, and McAbee would not have pled guilty had counsel rendered Constitutionally effective advice regarding the decision to enter the plea of guilty. See Wanatee v. Ault, 259 F.3d 700, 703-704 (8th Cir. 2001).

Of course, Courts are familiar with the two-part test regarding claims of ineffective assistance of counsel found in Strickland v. Washington, 466 U.S. 668 (1984). In order to prevail, a defendant must first show counsel's "performance was deficient," and then show that the deficient performance "prejudiced the defense." Id., at 687. "[I]n any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." Id., at 688. A petitioner must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Ibid.

In terms of a guilty plea, if the plea is induced by promises or threats which deprive it of the character of a voluntary act, it is thus void. Machibroda v. United States, 368 U.S. 487, 493 (1962). A conviction based upon such a plea is open to collateral attack. See Walker v. Johnston, 312 U.S. 275 (1998); Shelton v. United States, 356 U.S. 26 (1976). The ultimate determination to be made is whether the plea was coerced or otherwise invalid. See United States v. Follette, 395 F.2d 721 (2d Cir. 1968).

Certainly. if an attorney recklessly promises his client that a specific sentence will follow upon a guilty plea, or otherwise unfairly holds out an assurance of leniency in exchange for the plea of guilty, the question arises whether such assurances were coercive, or whether such representation may be deemed

Constitutionally ineffective. Brown v. Beto, 377 F.2d 950 (5th Cir. 1967). And while an erroneous sentence estimate by defense counsel does not rise to the level of ineffectiveness, see Baily v. United States, 312 F.2d 679 (10th Cir. 1963), an assurance of the sentence clearly crosses the line. Accordingly, A plea may not be voluntary when an attorney materially misinforms the defendant of the consequences of the plea or the Court's probable disposition. Blackledge v. Allison, 431 U.S. 63, 75 n. 8 (1977); Worthen v. Meachum, 842 F.2d 1179, 1182 (10th Cir. 1988). Counsel's unfair representation of what the sentence will be may be found to be coercive. United States v. Estrada, 849 F.2d 1304, 1306 (10th Cir. 1988)(citing Wellnitz v. Page, 420 F.2d 935, 936 (10th Cir. 1970)). The sentence imposed "is a direct consequence" of a guilty plea. Holmes v. United States, 876 F.2d 1545 (11th Cir. 1989).

Here, it was counsel's advice that prompted and convinced McAbee to enter his plea of guilty. McAbee is not skilled or educated in law or legal procedure. He had little choice but to rely on his lawyer's calculation of his sentence. And there is more than just McAbee's "word" for this. Counsel vigorously argued at sentencing for the sentence he promised McAbee would result. And although the appeal was dismissed, the appellate attorney provided those printouts which were shown to McAbee to induce his plea of guilty, all consistent with the claims made herein.

The plea agreement between McAbee and the government was nothing more than a windfall for the government. While it offered McAbee literally nothing for his timely plea of not guilty. No competent counsel could ever advise a defendant to enter a plea of guilty to a sentence of life imprisonment, especially where a sentence of death is not available. Plea agreements are supposed to benefit both parties. Here, there was no benefit to McAbee whatsoever.

Bottom line, had it not been for counsel's faulty and erroneous advice, McAbee would have proceeded to trial. And that is not to mention that counsel failed to make sure McAbee fully understood the plea agreement, and that he would not be able to appeal due to the waivers therein. Even as the sentence of life imprisonment was pronounced, McAbee still believed that he maintained his rights to appeal the sentence. It could not be more clear that counsel's errors were unconstitutionally inadequate.

By failing to correctly calculate McAbee's Guideline sentence, and advising McAbee that the twenty year sentence was forthcoming, McAbee's counsel rendered ineffective assistance of counsel as defined by the two-part Strickland test articulated above. Had McAbee known his actual Guidelines, and had counsel properly notified McAbee as to his actual sentencing exposure and probability of the outcome, McAbee would have insisted on his Constitutional right to trial by jury, and maintained his full spectrum of appellate rights.

CONCLUSION

Wherefore, McAbee prays that This Honorable Court will grant his Motion Under §2255 to Set Aside, Vacate, or Correct hi Sentence. He has proven that counsel performed unconstitutionally by rendering ineffective assistance of counsel. McAbee requests the plea agreement to be voided, and a date set for trial in the instant matter, or whatever remedy This Court finds adequate.

Respectfully Submitted,



Cameron Kelly McAbee
Reg. No. 57353-509
United States Penitentiary Terre Haute
PO Box 33
Terre Haute, IN 47808

CERTIFICATE OF SERVICE

I do hereby certify, pursuant to 28 U.S.C. §1746 and the laws of perjury of the United States, that the foregoing Motion Under §2255 to Vacate, Set Aside, or Correct Sentence is true and accurate to the very best of my ability, and was entered into the prison mail system, for mailing via United States Postal Service with First Class postage prepaid, addressed to:

Clerk of the Court
United States District Court
333 West Fourth Street, Room 411
Tulsa, OK 74103-3819

on this the 16th day of April, 2025.



Cameron Kelly McAbee
Reg. No. 57353-509
United States Penitentiary Terre Haute
PO Box 33
Terre Haute, IN 47808

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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| |) | |
| CAMERON KELLY McABEE |) | |
| Defendant, |) | |

AFFIDAVIT OF CAMERON KELLY McABEE

I, Cameron Kelly McAbee, hereby make the following statement pursuant to 28 U.S.C. §1746 and the laws of perjury of the United States of America:

For the first thirty-years of my life, I never had any exposure to the criminal justice system. So to say that I was, and still am ignorant, would be a massive understatement. I was forced to put all of my faith and trust into the legal advice of my attorneys, believing that lawyers should know best. Looking back, I can see how ignorant that was as well.

Before signing my plea agreement, my initial attorney, Travis Horton, told me plainly that I would receive a sentence of "twenty years at the most." My subsequent counsel, John Dunn, confirmed this notion, and although calculating my sentence two different ways, still told me specifically that "there was a light at the

end of the tunnel," assuring me that I was to receive a sentence of less than twenty years. Dunn even showed me printed out Guideline calculations confirming what he had told me, consistent with Horton's opinion as well. At sentencing, Dunn even argued for the sentence he advised me I would receive, and what he had showed me in the printouts. Dunn even told me on three separate occasions that if I received a sentence that exceeded those Guidelines, I could appeal the sentence. But he was adamant that I would just get the twenty years or less.

So not only did I believe, due to my lawyer's legal advice, that I would receive a sentence of twenty years at the most, I also believed that I retained my rights to appeal. Had I been properly advised that I was likely to receive a life sentence, and that I was giving up all of my appeal rights, there is no doubt that I would have proceeded to trial instead of pleading guilty. I received no benefit from my plea agreement. I do not believe a sane person would sign a plea such as mine, unless they were facing a death penalty, which I was not.

I hereby swear that the foregoing statements are true and accurate to the very best of my ability, pursuant to 28 U.S.C. §1746.



Cameron Kelly McAbee
Reg. No. 57353-509
United States Penitentiary Terre Haute
PO Box 33
Terre Haute, IN 47808

Cameron Ave 5733504
USD Terre Haute
PO box 33
Terre Haute IN 47808

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Heidi D. Campbell, Clerk
U.S. DISTRICT COURT

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US District Court
333 West Fourth Street room 411
Tulsa OK 74103-3819

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